IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. No. 1367 of 1991

DATE OF DECISION : 24.10.2006

Inder Kaur

.... PETITIONER

Versus

Bant Singh (now dead) through his LRs

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Arun Jain & Mr. Amit Jain, Advocates,
for the petitioner.

None for the respondent.

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This is landlady's revision petition against the judgment dated 9.1.1991, passed by the Appellate Authority, Chandigarh, whereby her appeal against the judgment dated 29.9.1986, passed by rent Controller, Chandigarh, has been dismissed.

2. The petitioner-landlady sought ejectment of the respondent-tenant from the demised premises, which consists of two rooms on the first floor of a 10 Marla house in Chandigarh on the ground of personal necessity. The trial court dismissed the ejectment application.

3. I have heard counsel for the petitioner and gone through the impugned judgments passed by both the courts below as well as the record of the case.

4. Counsel for the petitioner raised two arguments. Firstly, that the courts below should not have taken into consideration the subsequent development while determining the issue of personal necessity. It is submitted that on the day, when the ejectment application was filed, the landlady required the demised premises for her use and occupation, but if subsequently, some accommodation in the same building fell vacant and not occupied by the landlady, the same should not have been taken into consideration. In support of his argument, counsel for the petitioner relied upon decision of the Supreme Court in ***Gaya Prasad*** v. ***Pradeep Srivastava,***

2001 (1) Rent Control Reporter 221. Secondly, counsel submitted that actually, in other two rooms on the first floor, the married daughter of the petitioner was residing. When two rooms on the ground floor fell vacant, the landlady did not occupy the same, because she only wanted to live with her daughter on the first floor, therefore, need of the landlady of the demised premises on the first floor was genuine. In support of his submission, counsel relied upon decisions of the Supreme Court in ***Sarla Ahuja*** v. ***United India Insurance Company Limited,*** 1999 Haryana Rent Reporter, 57 and ***P.S. Pareed Kaka and others*** v. ***Shafee Ahmed Saheb***, 2004 (1) Rent Control Reporter, 503.

5. I do not find any force in either of the submissions made by counsel for the petitioner. It is well settled that the normally, rights and obligations of the parties are adjudicated upon, as they obtain at the commencement of the lis However, in some cases, even subsequent event can be taken into consideration, if such event completely eclipse the need of landlord. In this regard, reference can be made to the decision of the Supreme Court in ***Hasmat Rai*** v. ***Raghunath Prasad,*** 1981 (3) SCC 103, ***Kamleshwar Prasad*** v. ***Pradumanju Agarwal,*** 1997 (4) SCC 413 and ***Gaya Prasad's case*** (supra). In the instant case also, in my opinion, the Appellate Authority has rightly taken into consideration the subsequent event that two rooms and one kitchen on the ground floor fell vacant during the pendency of the case in December, 1986 and the same were not occupied by the landlady and were re-let out in January, 1997 to the tenant. This fact completely establish that actually the landlady was not required the demised premises for her personal necessity, otherwise she would have occupied two rooms and the kitchen on the ground floor. I also do not find any force in the second contention of counsel for the petitioner. It is not mere wish of the landlord on the basis of which a premises can be got vacated. In this case, the landlady could have settled in two rooms on the ground floor, when the same were fallen vacant during the pendency of the case. Merely, because of her wish to live on the first floor, where her daughter is residing, her alleged requirement cannot be taken as genuine or bonafide. Though it is correct that a tenant can not dictate his terms to the landlord to adjust with the existing accommodation available with the landlord, as held in ***Sarla***

Ahuja's case (supra), but when a suitable accommodation in the same premises becomes available, the landlord cannot be permitted to say that he will not accommodate himself in the same and would like to live in a particular portion of the same building, though accommodation is exactly the same. In this case, the petitioner wanted ejectment of the tenant from two rooms on the first floor. If two rooms and a kitchen become available on the ground floor, which in my opinion may suit more to the landlady, she being an old lady. Moreover, in Chandigarh, the ground floors are also having open space, which is not available on the first floor. The choice of the landlady that she wants to live on the first floor cannot be said to be fair and reasonable. The judgments cited by counsel for the petitioner are not applicable to the facts of this case. Thus, I do not find any ground to interfere in the impugned judgments, passed by the courts below.

6. Dismissed.

October 24, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**